



## **A CAUTION REGARDING CONTRACT LIABILITY PERIODS**

### **Client generated conditions can pose liability and insurability issues for the architect.**

The Directors of NZACS have become aware of instances where Clients are requesting an extension of time for the duration of the liability of the Architect for up to 10 years. Such conditions seek to provide an extension of time for the Client to bring an action in tort and/or for breach of contract. These provisions may be contained in client-generated conditions of engagement or by a client change to an NZIA Agreement for Services.

Under the Limitation Act 1950, a time bar applies to any civil proceeding in respect of breach of contract, such that it must be brought within 6 years of the breach.

The trigger date for an action in tort (e.g. negligence) is when a plaintiff has suffered legally recognised damage, or the date when the plaintiff ought to have been aware of such damage. Again, the civil proceeding must be brought within 6 years of that date.

Under the Building Act 2004 civil proceedings must be brought within 10 years of the date of the act or omission on which the proceedings are based.

The time bars under the Limitation Act 1950 still apply within this 10 year time period.

NZACS recommends that its Members always seek to limit the duration in time for liability to a Client to no more than 6 years. Why would you want to expose yourself to a greater period anyway?

The NZIA Agreement for Services AAS 2008 recognises this under Section E5 Clause (c), with the standard limitation period being 6 years.

Where a client wants a longer period than six years, or a greater amount than \$250k, the client has to request that, and the architect agree, and the specific terms need to be inserted in Section E7 Special Conditions.

The fees should reflect this additional risk and cost. A statement recording the additional fee would be an addition to Section E5 (d), again pro-actively inserted by the architect.

Members are cautioned not to agree to any longer contract liability period than 6 years.